Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1979

No. 79-156

CHARLES PRAETORIUS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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In The

Supreme Court of the United States

October Term, 1979

No.

CHARLES PRAETORIUS,

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vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable Chief Justice of the United States and the Associate Justices of the United States Supreme Court:

Petitioner Charles Praetorius respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, affirming a judgment of the United States District Court for the Eastern District of New York, convicting petitioner of conspiracy to import heroin, and to distribute and to possess with intent to distribute heroin, in violation of 21 U.S.C. §846. Petitioner was

also convicted of aiding and abetting the distribution of approximately 267 grams of heroin on June 15, 1977, in violation of 21 U.S.C. §841(a)(1) and 18 U.S.C. §2. He was sentenced on each count to concurrent terms of ten years imprisonment plus a ten year special parole term, and a $50,000 fine ($25,000 on each count).

OPINION BELOW

The United States Court of Appeals for the Second Circuit affirmed the judgment of the district court in a summary judgment which is annexed hereto as Appendix A.

JURISDICTION

The judgment of the court of appeals was entered on May 15, 1979. A petition for rehearing was denied by the court of appeals on May 29, 1979. That order is annexed hereto as Appendix B.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

QUESTION PRESENTED

Whether the speculative and inflammatory summation by counsel for co-defendant Doris Jackson prejudiced the jury against petitioner and petitioner was thereby denied his constitutional right to a fair trial.

STATEMENT OF THE CASE

Indictment No. 78 Cr. 135(S)(2) charged petitioner, his wife Diann Praetorius, and sixteen other defendants with various violations of the federal narcotics laws. Count One of the indictment charged petitioner alone with conducting a continuing criminal enterprise (21 U.S.C. §848). Counts Two

through Ten charged all defendants with conspiracy and substantive violations of the narcotics laws. After a seven week trial the jury acquitted petitioner of the §848 charge, and convicted him on the conspiracy and distribution charges (Counts 2 and 5 respectively). The jury also convicted petitioner's wife, Diann Praetorius, and defendant Louis Juan on the conspiracy count, and acquitted three other defendants of the conspiracy count. As to all other defendants and counts, the jury was unable to reach a verdict.

The indictment, which superceded two previous ones, also charged Glenston Page Laws, Audrey Plunkett and Brenda Hollenback, all of whom were served and testified for the Government. Two additional defendants, Kathy Paige Sargent and Joseph Smith, were also charged, but their cases were severed prior to trial. They did not testify.

I. The Trial

A. The Government's Case

The Government sought to prove that the defendants, together with unindicted co-conspirators Ralph Abruzzo and Kenneth Pollitt,[1] made a series of trips to Bangkok, Thailand, from September 1976 through December 1977 and, under the supervision of petitioner,[2] imported quantities of heroin. Each trip constituted a substantive count in the indictment.

The first trip occurred in September 1976 (Count 3). Petitioner and Abruzzo, co-workers for New York Airways at La Guardia Airport, traveled together and in Bangkok were

1. Abruzzo and Pollitt were named in the original indictment, but subsequently testified for the Government.

2. Petitioner's position in the alleged scheme was the basis of the §848 count against him.

introduced to a person by the name of "Nui", from whom they purchased slightly more than two ounces of heroin for $600 (Abruzzo, 990-996).[3]

In April 1977, another trip occurred (Count 4), the participants being petitioner, Abruzzo and defendants Carlotta Ragan and Doris Jackson. Petitioner and Abruzzo purchased two kilograms of heroin from Nui and thereafter had some of the drugs taped on the bodies of the females (Abruzzo, 1005-1012). On their return flight they stopped in London and got hotel rooms, but the two women unexpectedly left and returned to New York. Two days later Abruzzo and petitioner met Diann, petitioner's wife, and returned to New York. Abruzzo subsequently gave petitioner the five ounces of heroin he had carried and received $15,600 in several payments during April 1977 (Abruzzo, 1014-1016).

In July 1977, the third trip occurred with petitioner, Abruzzo and defendants Kenneth Clark, Louis Juan, Jr., and Glenston Page Laws (Count 6). Two kilos of heroin were purchased and subsequently packed on Juan, Clark and Laws. On the return flight, petitioner, Laws and Abruzzo traveled together, but during a stop in Teheran, petitioner and Abruzzo lost their seats (Laws, 314-327; Abruzzo, 1017-1033). Laws continued to New York and upon arrival telephoned Diann Praetorius to inform her of petitioner's delay in Teheran (Laws, 328).

A few days later, petitioner, Diann Praetorius and Abruzzo went to co-defendant Juan's house in Long Island. Juan, petitioner and Abruzzo went into the bedroom and Juan gave them the drugs he had carried (Abruzzo, 1034).

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3. Numbers in parentheses refer to the pages of the trial transcript. Numbers in parentheses preceded by the letter "A" refer to pages of Appellants' Appendix in the court of appeals.

During July and August 1977, petitioner and Laws discussed Laws' dissatisfaction with his share of the proceeds of the previous trip. Petitioner agreed to lend Laws $24,000 on condition that Laws give him four ounces of the drugs Laws was going to purchase. Subsequently, petitioner gave Laws $24,000 and introduced him to his brother Frederick Praetorius (Laws, 328-341).

Laws went to Bangkok in August 1977 (Count 7) with defendants Audrey Plunkett, Kathy Paige Sargent, and Joseph Smith. Plunkett had been sent there by a man named Daniel Warren,[4] who had given her money to give to Laws and she subsequently brought back drugs (Plunkett, 1945-1992). While in Bangkok, Laws purchased three or four kilos of heroin for $40,000. He also saw Frederick Praetorius in Bangkok and apparently gave him four ounces to give to petitioner. When Laws returned to New York petitioner acknowledged receiving the four ounces from Frederick Praetorius (Laws, 341-349).

In September 1977, another trip took place (Count 8). On this occasion in addition to petitioner and Abruzzo, the following persons went along: Diann Praetorius, defendants Kenneth Clark, Eric Romandi, Vincent Auletta and Kenneth Pollitt. After arrival in Bangkok, there was a discussion in petitioner's hotel room about the fact that Romandi had not yet arrived (Abruzzo, 1036-1039; Pollitt, 2000-2003).

The next day Diann Praetorius, Abruzzo, Pollitt and Auletta were in the lobby of the hotel when they saw petitioner carrying a shopping bag. A few minutes later he came to the lobby and told them he had received only half of the four kilos they were to obtain. Some time later Nui called and told petitioner that the money he had received was not enough and that Abruzzo and Diann Praetorius should bring an additional

4. Warren was a partner of Laws, but he was not indicted (Laws, 403-426).

$1,000 per kilo. Abruzzo and Diann thereafter went with the money to the Stockholm Club. One of Nui's friends brought Abruzzo to a restaurant while Diann Praetorius remained at the club (Abruzzo, 1038-1042; Pollitt, 2004-2006). Two or three hours later Abruzzo was told the rest of the heroin would be in a cab waiting outside. He went to the cab, found the heroin and returned to the hotel room. Diann Praetorius was not there at that time, but came back about an hour later and said she had given the money to Nui (Abruzzo 1042-1043). Two days later the heroin was weighed and packaged and placed on Clark, Pollitt, Auletta and Romandi [5] (Abruzzo, 1043; Pollitt, 2007-2010).

On September 28, Abruzzo, petitioner and his wife left Bangkok, the others having left four or five days earlier with the drugs (Abruzzo, 1085). Two days after arrival in New York, Pollitt met petitioner and Abruzzo at La Guardia Airport and gave Abruzzo the heroin. He received $20,500 from Abruzzo (Pollitt, 2011-2012).

In December 1977, Abruzzo spoke with Diann who told him that petitioner, Laws and Frederick Praetorius had gone to Bangkok and that petitioner wanted Abruzzo to call him in Bangkok. Abruzzo did not go on that trip (Abruzzo, 1087).

The trip referred to was the last to occur (Count 10). On that occasion, petitioner, Laws, Frederick Praetorius, Kenneth Lebel, William Burley, Michael Lanza, Audrey Plunkett, Brenda Hollenback, Gail Harris and Kathy Sargent went.[6] Laws gave petitioner $30,000 which was later given to Nui. The next day Frederick Praetorius received a suitcase full of heroin which he gave to petitioner. The heroin was subsequently packaged and placed on the individuals (Laws, 366-367).

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5. Romandi had arrived a few days after the others.

6. Hollenback, Harris and Plunkett went there pursuant to instructions from Daniel Warren and each carried drugs given to them by Laws back to the United States (Laws, 366, 367; Hollenback, 1843-1859; Plunkett, 1979).

In March 1978, Laws went to Thailand alone, purchased drugs and was subsequently arrested in England on his return (Laws, 376). He subsequently entered into an agreement with the United States Attorney that, in exchange for his testimony, whatever sentence he was to receive in the United States would run concurrently with the sentence imposed in England (Laws, 377).

In addition to the foregoing testimony the Government introduced passports, airline tickets and hotel registration cards of various witnesses and defendants (337; 383-385; 992-993; 998; 1020; 1083; 2281-2285).

With respect to the distribution counts (Counts 5 and 9) against petitioner, a Jacob Hunt testified that from the fall of 1976 until June of 1977 he bought varying amounts of heroin from petitioner which he in turn sold to others. In June 1977, he sold some of the heroin he had received from petitioner to an undercover police officer and was subsequently arrested (Hunt, 1716-1738).

Kenneth Pollitt also testified that in October 1977 he sold one gram of heroin, which he had received from petitioner for free, to a Suffolk County undercover officer and was arrested for that sale in January 1978[7] As indicated, the jury convicted petitioner of the June 1977 (Hunt) distribution, but was not able to reach a verdict as to the October 1977 (Pollitt) distribution.[8]

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7. With respect to this count, the Suffolk County police officers involved in the sale also testified for the Government (Gunyan, 2338-2346; Gatta, 2346-2348; Ciappetta, 2360-2364; Sawiski, 2399-2400).

8. All of the unresolved counts against petitioner were subsequently dismissed by the district court.

B. The Summations

At the conclusion of the testimony,[9] and after the Government's summation, the defense attorneys argued to the jury on behalf of their respective clients. Of the thirteen attorneys, twelve stressed the inherent incredibility of the principal Government witnesses, given their admitted narcotics activities and interest in testifying for the Government. The last attorney, representing the defendant Doris Jackson, argued in a totally different vein. She declared that her client was "duped" into going to Bangkok.

> "I would suggest something to you. I would suggest that if you examine the evidence, and if you examine Doris Jackson's character, which is a subject I will get into in a few minutes, I think it is very fair to assume that Doris Jackson was a dupe; she was a cover-up, that Doris Jackson went to Bangkok, Thailand, because somebody thought it would further interests [sic] to be with Doris Jackson.
>
> * * *
>
> If you were dealing in drugs, if you were Praetorius and Abruzzo, if you were someone else and you were travelling to Bangkok, Thailand, wouldn't it be worth an extra $2000 for a ticket and a hotel room for such a cover? If you were taking someone like Doris Jackson along, a

9. In addition to the Government's witnesses, two witnesses for petitioner were presented, both of whom testified relevant to the §848 count. Two of the defendants, Romandi and Auletta testified on their own behalf. The defendant Doris Jackson presented two character witnesses, as did the defendant Kenneth Clark.

dupe, the very, very, ugly, very poor woman who is described by Glen Laws, if you had any idea what her thoughts are on heroin, do you think you would tell her?

No, of course not. Because she'd never go with you." (A44-46).

"There is also something very strange that keeps cropping up. Do various — through various witnesses in this case. That is, that in April of 1977, when Doris and Carlotta, the girls from Philadelphia, went to London, something happened. You heard it from Glenston Laws when he was describing what Charlie told him. Charlie said he had trouble with the girls from Philadelphia. Something to that effect. You heard it from Hunt. He heard something about trouble with the girls from Philadelphia. You heard it from Pollitt. There was some kind of trouble with the girls from Philadelphia.

Well, what do you think could have happened? . . . There was no testimony as to what happened in London, England. I would suggest to you that what happened is that somehow Doris Jackson became aware of this conspiracy and somehow or other she took off and came back to the United States. And that explains the testimony of Pollitt, explains the testimony of Abruzzo, explains the testimony of Laws. About something happening with the two girls from Philadelphia." (A48-49).

"Doris is a dupe. Doris is a victim." (A55).

"You have to decide whether Doris Jackson is the victim or the perpetrator." (A56).

At the conclusion of this summation counsel moved for a mistrial (A58-61; 3546-3560) which was denied the following day (3560).

REASONS FOR GRANTING THE WRIT

The writ should issue because petitioner was deprived of his constitutional right to a fair trial by the totally speculative and inflammatory comments of co-defendant's counsel who cast the blame for her client's predicament directly on petitioner.

In her summation, which was the last from the defense, counsel for co-defendant Doris Jackson painted a portrait of her client as an innocent "dupe" used by "Abruzzo and Praetorius" in their narcotics venture. Counsel told the jury that when her client "discovered" the conspiracy in London on her return from Bangkok during the April 1977 trip she immediately sought to disassociate herself with it and therefore left London contrary to plan.[10] In short, counsel conceded the existence of the conspiracy as charged by the Government, with particular reference to petitioner's position in the scheme, and merely disclaimed knowing participation by her client.

Without challenging the propriety of co-counsel's methods in attempting to win an acquittal for her client, petitioner asserts that the highly speculative and inflammatory nature of her summation was totally antagonistic to petitioner's defense and prejudiced his case in the eyes of the jury. Accordingly, the district court abused its discretion in denying petitioner's motion for a severance, and petitioner was denied a fair trial.

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10. There was no evidence in the case as to Ms. Jackson's reasons for leaving London. In addition, Ms. Jackson indicated to petitioner's counsel that she never told her attorney that the reason for her sudden departure was her discovery of the conspiracy (3575-3577).

This Court, in *Schaffer v. United States,* 362 U.S. 511, 516, 80 S. Ct. 945, 948 (1960) imposed a duty on a trial court to grant a severance at any time during a trial if prejudice to a defendant appears. *Accord, United States v. Johnson,* 478 F.2d 1129 (5th Cir. 1973).

In this case, it cannot seriously be argued that co-counsel's summation did not prejudice petitioner. The attorney's remarks did more than merely implicate petitioner in the conspiracy, they actually supported and urged the Government's allegations that he was the prime mover, and defendant Jackson's acquittal was made to depend on the jury's acceptance of that theory. *See United States v. Johnson, supra; DeLuna v. United States,* 308 F.2d 140 (5th Cir. 1962).

In *Johnson, supra,* the court reversed the conviction on the basis of the antagonistic defense proffered by Johnson's co-defendant, holding that a severance should have been granted at the end of co-defendant's counsel's opening remarks, during which the conflict was made apparent. But clearly, Johnson had at least an opportunity to respond to the accusations levied against him and, when the co-defendant took the stand, to cross-examine the source. By contrast, petitioner here had no such opportunity since he was the first to sum up and since defendant Jackson did not testify. *Cf. United States v. Bubar,* 567 F.2d 192, 205 (2d Cir. 1977).

The comment "if you were dealing in drugs, if you were Praetorius and Abruzzo, . . . and you were travelling to Bangkok, Thailand, wouldn't it be worth an extra $2,000 for a ticket and a hotel room for such a cover?" is not just a passing remark about insignificant details. *Cf. United States v. Sacco,* 563 F.2d 552, 555-556 (2d Cir. 1977). It is a concession of the truth of the Government's case against all other defendants. It is an acknowledgment that "Praetorius and Abruzzo" were "dealing in drugs".

It is one thing when a defendant's defense implicates a co-defendant; it is quite another thing when that defendant seeks to avoid criminal liability by accusing the co-defendant of having "duped" him into committing the crime. *United States v. DiGiovanni,* 544 F.2d 642, 644 n. 2 (2d Cir. 1976).[11]

It is true that during his charge the judge instructed the jury that the arguments of counsel were not evidence (A66; A70). However, those instructions were general and did not make any particular reference to the specific accusations levied by Jackson's counsel. As such, they were insufficient to dispel the prejudice counsel's summation created. *Cf. United States v. Barrera,* 486 F.2d 333, 339 (2d Cir. 1973).

The court of appeals rejected petitioner's foregoing argument, holding that "in this instance the summation was insignificant in the context of a lengthy trial."(Appendix A, 2a). However, it is precisely because of the lengthy trial and the point at which the summation occurred that counsel's comments were highly prejudicial.

In a trial of this length, it is not unreasonable to expect that a jury will rely in great part on the attorneys' summary of the evidence to assist them in their task. As the court of appeals acknowledged, given the length and complexity of this trial, it was to be expected that the jury would experience some difficulty in arriving at their verdicts. Thus, the summations, from both sides, were undoubtedly a valuable guide to the jurors, and, for that reason, unlikely to be lightly regarded. *See generally, Herring v. New York,* 422 U.S. 853, 95 S. Ct. 2550 (1975). In addition, and perhaps most importantly, defendant Jackson's counsel's summation was the last word the jury heard from the defense camp, a factor that undoubtedly added

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11. It should be noted that subsequent to this trial the defendant Jackson *was* severed from the retrial of the other defendants on the unresolved counts and ultimately acquitted

significance to those comments. Therefore, the highly prejudicial remarks, which, incidentally, went far beyond the scope of the evidence presented, could not escape the jury's attention. Nor could the trial court's instructions lessen their impact because, although the court told the jury that the attorney's comments were not evidence, the jury was also instructed that it was free to accept any reasonable inference the attorneys were urging. Thus, to suggest, as the court of appeals did, that the trial court's instructions dissipated the prejudice flowing from counsel's remarks, is to ignore the critical function the summation plays in a jury trial, particularly of this kind.

The evidence against petitioner consisted almost exclusively of co-conspirator-testimony and was no greater than that against his co-defendants, yet the jury promptly convicted him of the conspiracy charge while failing to reach a verdict as to most of the other defendants. The accusation levied against petitioner by Jackson's counsel could not but have played a significant part in that result. Accordingly, petitioner was denied a fair trial and his conviction should not be permitted to stand.

CONCLUSION

For the above stated reasons, a writ of certiorari should issue to review the judgment of the Court of Appeals for the Second Circuit.

Respectfully submitted,

s/ Howard J. Diller
DILLER, SCHMUKLER &
ASNESS
Attorneys for Petitioner

APPENDIX A — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the day of May, one thousand nine hundred and seventy-nine.

Present:

Hon. James L. Oakes,
Hon. Ellsworth A. Van Graafeiland,
Circuit Judges.
Hon. Milton Pollack,
District Judge.

Filed May 15, 1975

79-1022

United States of America,

Appellee,

v.

Charles Praetorius, Diann Praetorius, and Louis Juan, Jr.,

Appellants.

Appendix A

ORDER

Appeal from convictions after a jury trial in the United States District Court for the Eastern District of New York, Eugene H. Nickerson, Judge. Charles Praetorius was convicted on one count of conspiring to import, distribute, and possess heroin and one substantive count of distributing heroin; Diann Praetorius and Louis Juan were also convicted on the conspiracy count.

Charles complains that counsel for codefendant Jackson presented in summation a defense that the codefendant was an innocent dupe of appellant. He argues that the court abused its discretion in denying appellant's motion for a severance made at the conclusion of the summation. Appellant relies on *United States v. Johnson,* 478 F.2d 1129 (5th Cir. 1973), and *DeLuna v. United States,* 308 F.2d 140 (5th Cir. 1962).

Johnson is distinguishable because it involved only two defendants and a background of clearly antagonistic defenses presented to the court by pretrial motion and presented at trial by the testimony and confession of the codefendant. *DeLuna,* also involving only two defendants was reversed on Fifth Amendment grounds for comment by a codefendant's counsel on the defendant's failure to testify. The trial court has great discretion in the grant or denial of a severance, and in this instance the summation was insignificant in the context of a lengthy trial. Judge Nickerson repeatedly instructed the jury that the summations were not evidence; the length of the jury's deliberations, the jury's failure to convict Charles on the continuing conspiracy count or the substantive count involving Jackson, the failure of appellant's counsel to object during the summation, and the probability that some defendants would raise the defense of being duped all go to indicate that Judge

Nickerson did not abuse his discretion in denying the motion for a severance. *Cf. United States v. Roberts,* 583 F.2d 1173, 1177 (10th Cir. 1978).

Diann and Louis argue that the jury's verdict was coerced because of the trial judge's failure to discontinue deliberations after the forelady advised him that her health, job, and nerves were suffering because of the prolonged deliberations and after the jury advised that one member did not believe that further deliberation would be fruitful. The court then gave a modified *Allen* charge, and the jury convicted Diann and Louis about four and a half hours later, after a total of almost five full days of deliberations. Diann argues that it is likely that the forelady was the holdout juror who gave in because of her personal and physical problems and that even if the forelady was not the holdout she was unable to participate in the process of cooperation that the *Allen* charge is supposed to induce (that is, be persuaded to the minority viewpoint) and that the holdout might have been induced to give in by the forelady's plight. Louis argues that the court should not speculate on who the holdout juror was because the only important factor is that the holdout did capitulate to the majority.

But it is not possible to say that the forelady was likely to be the holdout juror. She could just as easily have been one of the eleven voting for conviction who realized that because there was a holdout the deliberations would continue longer than she would like. Thus appellants' complaint, notwithstanding their citation of *United States v. Robinson,* 560 F.2d 507 (2d Cir. 1977) (en banc), amounts to an attack on the coerciveness of the situation induced by the *Allen* charge. We can find no inherent coercion. The charge that Judge Nickerson gave was a modified *Allen* charge, the first (and only) such charge given, and it was mild at that. The jurors indicated that they were stalled after four days of deliberation, as they might well be given the length

and complexity of the trial; the charge reminded them of their purpose and persuaded them to deliberate further. No coercion appears here. The jury deliberated four and a half hours after receiving the *Allen* charge before it brought in verdicts of conviction against Diann and Louis; it continued to deliberate, having responded affirmatively and unanimously to the judge's specific inquiry whether further deliberations would be fruitful, even after convicting Diann and Louis; and it showed by the shift in the verdicts on other counts and as to other defendants that continued deliberations were affecting the votes. The situation in *United States v. Pleva,* 66 F.2d 529 (2d Cir. 1933), is completely different from this case.

Finally, Diann Praetorius argues that her sentence was improper because of a material error in the presentence report to the effect that she was a distributor of the drugs. The court could determine for itself on the basis of the evidence presented at the lengthly trial that Diann was involved in distributing the heroin. Moreover, counsel did not properly raise at sentencing the objection that the presentence report was "materially inaccurate," but said only that there was "*virtually* no evidence to substantiate such a suggestion." Moreover, he did not request from the Government disclosure of the source of the information or corroborating evidence, or request an evidentiary hearing. Finally, it is not at all clear that "it is more likely than not that but for the erroneous pre-stence report [Diann] would not have been sentenced as severely as she was" (Br. 26). The court's only reference to the presentence report shows how minimal its effect on the court was: "Obviously this has been a matter that has been on my mind for some time, long before I got the presentence report." Thus, this case does not fall within the narrow strictures of appellate review of sentences. *United States v. Tucker,* 404 U.S. 443, 446 (1971).

Appendix A

The judgments of conviction are affirmed.

s/ James L. Oakes

s/ Ellsworth A. Van Graafeiland
Circuit Judges.

s/ Milton Pollack
District Judge.

APPENDIX B — PETITION FOR REHEARING

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-ninth day of June, one thousand nine hundred and seventy-nine.

Present:

HONORABLE JAMES L. OAKES

HONORABLE ELLSWORTH VAN GRAAFEILAND

Circuit Judges

HONORABLE MILTON POLLACK

District Judge.

79-1022
79-1023
79-1073

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

CHARLES PRAETORIUS,
DIANN PRAETORIUS,
LOUIS JUAN, JR.,

Defendants-Appellants.

Appendix B

A petition for a rehearing having been filed herein by counsel for the Appellants Charles and Diann Praetorius.

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

A. Daniel Fusaro,
Clerk

APPENDIX B — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-ninth day of June, one thousand nine hundred and seventy-nine.

79-1022
79-1023
79-1073

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

CHARLES PRAETORIUS,
DIANN PRAETORIUS,
LOUIS JUAN, JR.,

Defendants-Appellants.

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by counsel for the appellants, Charles and Diann Praetorius, and no active judge or judge who was a member of the panel having requested that a vote be taken on said suggestion,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

s/ Irving R. Kaufman
Chief Judge
IRVING R. KAUFMAN

see
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